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7 Millennium Products, Inc.

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 JONATHAN RETTA, KIRSTEN  
12 SCHOFIELD, and JESSICA  
MANIRE, on Behalf of Themselves  
13 and All Others Similarly Situated,

14 Plaintiffs,

15 v.

16 MILLENNIUM PRODUCTS, Inc.,  
17 *et al.*

18 Defendants.

Case No. 2:15-CV-01801-PSG-AJW

**DEFENDANT MILLENNIUM  
PRODUCTS, INC.'S ANSWER TO  
FOURTH AMENDED CLASS  
ACTION COMPLAINT**

Judge: Hon. Philip S. Gutierrez

4AC Filed: February 11, 2016  
Trial Date: December 6, 2016

**JURY TRIAL DEMANDED**

1 Defendant Millennium Products, Inc. (“MILLENNIUM”) hereby answers the  
2 putative Fourth Amended Class Action Complaint (“COMPLAINT”) filed by  
3 Plaintiffs Jonathan Retta, Kirsten Schofield, and Jessica Manire (“PLAINTIFFS”)  
4 as follows. This answer is based on MILLENNIUM’s knowledge as to its own  
5 conduct and information and belief as to all other matters described herein.

6 In response to the unnumbered introductory paragraph, MILLENNIUM  
7 specifically denies that the requisites for class action treatment are present, that this  
8 action could properly proceed as a class action, or that PLAINTIFFS or the putative  
9 class are entitled to any relief whatsoever. MILLENNIUM lacks knowledge or  
10 information sufficient to admit or deny the remainder of the unnumbered  
11 introductory paragraph, and on that basis, denies each and every allegation therein.

## 12 **INTRODUCTION**

13 1. MILLENNIUM admits that, in 2010, MILLENNIUM decided to  
14 market and distribute an alcoholic version of its kombucha products and a non-  
15 alcoholic version of its kombucha products. MILLENNIUM denies the remainder  
16 of Paragraph 1.

17 2. MILLENNIUM avers that Paragraph 2 consists of legal arguments and  
18 conclusions to which no response is required. To the extent any response to  
19 Paragraph 2 is necessary, MILLENNIUM denies each and every allegation of  
20 Paragraph 2. MILLENNIUM specifically denies that “every flavor of  
21 Millennium’s GT’s Enlightened Kombucha and Enlightened Synergy lines” is at  
22 issue in this action, that any products other than the specific products actually  
23 purchased by PLAINTIFFS are at issue in this action, and that PLAINTIFFS may  
24 pursue claims as to any products other than other than such specific products.

25 3. MILLENNIUM denies that labeling and advertising of any  
26 MILLENNIUM product is or has ever been misleading. MILLENNIUM lacks  
27 knowledge or information sufficient to admit or deny the remainder of Paragraph 3,  
28 and on that basis, denies the remainder of Paragraph 3.

1           4.     MILLENNIUM avers that Paragraph 4 does not allege facts that  
2     MILLENNIUM is required to admit or deny. To the extent any response to  
3     Paragraph 4 is necessary, MILLENNIUM denies each and every allegation of  
4     Paragraph 4. MILLENNIUM specifically denies that the requisites for class action  
5     treatment are present, that this action could properly proceed as a class action, or  
6     that PLAINTIFFS or the putative class are entitled to any relief whatsoever.

7                                   **PARTIES**

8           5.     MILLENNIUM denies that labeling and advertising of any  
9     MILLENNIUM product, or that any of MILLENNIUM's conduct, is or has ever  
10    been deceptive, misleading, unfair and/or fraudulent or has injured PLAINTIFFS in  
11    any way. MILLENNIUM further denies that (1) any statements made on  
12    MILLENNIUM products were "unauthorized" or "mischaracterized the level,  
13    amount, and nature of antioxidants in the bottles"; (2) PLAINTIFFS paid a "price  
14    premium" for any MILLENNIUM products; and (3) any of MILLENNIUM's  
15    Enlightened products are or have ever been alcoholic beverages or required to bear  
16    alcohol warnings. To the extent Paragraph 5 purports to quote excerpts from  
17    MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
18    refers to those materials as the best evidence of their own contents.  
19    MILLENNIUM avers that the remainder of Paragraph 5 consists of legal arguments  
20    and conclusions to which no response is required. To the extent any response to the  
21    remainder of Paragraph 5 is necessary, MILLENNIUM lacks knowledge or  
22    information sufficient to admit or deny the remainder of Paragraph 5, and on that  
23    basis, denies the remainder of Paragraph 5.

24          6.     MILLENNIUM denies that labeling and advertising of any  
25    MILLENNIUM product, or that any of MILLENNIUM's conduct, is or has ever  
26    been deceptive, misleading, unfair and/or fraudulent or has injured PLAINTIFFS in  
27    any way. MILLENNIUM further denies that (1) any statements made on  
28    MILLENNIUM products were "unauthorized" or "mischaracterized the level,

1 amount, and nature of antioxidants in the bottles”; (2) PLAINTIFFS paid a “price  
2 premium” for any MILLENNIUM products; and (3) any of MILLENNIUM’s  
3 Enlightened products are or have ever been alcoholic beverages or required to bear  
4 alcohol warnings. To the extent Paragraph 6 purports to quote excerpts from  
5 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM  
6 refers to those materials as the best evidence of their own contents.  
7 MILLENNIUM avers that the remainder of Paragraph 6 consists of legal arguments  
8 and conclusions to which no response is required. To the extent any response to the  
9 remainder of Paragraph 6 is necessary, MILLENNIUM lacks knowledge or  
10 information sufficient to admit or deny the remainder of Paragraph 6, and on that  
11 basis, denies the remainder of Paragraph 6.

12 7. MILLENNIUM denies that labeling and advertising of any  
13 MILLENNIUM product, or that any of MILLENNIUM’s conduct, is or has ever  
14 been deceptive, misleading, unfair and/or fraudulent or has injured PLAINTIFFS in  
15 any way. MILLENNIUM further denies that (1) any statements made on  
16 MILLENNIUM products were “unauthorized” or “mischaracterized the level,  
17 amount, and nature of antioxidants in the bottles”; (2) PLAINTIFFS paid a “price  
18 premium” for any MILLENNIUM products; and (3) any of MILLENNIUM’s  
19 Enlightened products are or have ever been alcoholic beverages or required to bear  
20 alcohol warnings. To the extent Paragraph 7 purports to quote excerpts from  
21 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM  
22 refers to those materials as the best evidence of their own contents.  
23 MILLENNIUM avers that the remainder of Paragraph 7 consists of legal arguments  
24 and conclusions to which no response is required. To the extent any response to the  
25 remainder of Paragraph 7 is necessary, MILLENNIUM lacks knowledge or  
26 information sufficient to admit or deny the remainder of Paragraph 7, and on that  
27 basis, denies the remainder of Paragraph 7.  
28

1           8.     MILLENNIUM admits that Millennium Products, Inc. is a California  
2 corporation located at 4646 Hampton St., Vernon, California 90058, that  
3 MILLENNIUM manufactures, advertises, sells, distributes, and markets  
4 Enlightened kombucha nationwide, and MILLENNIUM's website instructs that  
5 customer correspondence be directed to a California address. MILLENNIUM  
6 denies that the marketing, advertising, or product information of any  
7 MILLENNIUM product is or has ever been misleading. MILLENNIUM avers that  
8 the remainder of Paragraph 8 consists of legal arguments and conclusions to which  
9 no response is required. To the extent any response to the remainder of Paragraph 8  
10 is necessary, MILLENNIUM denies the remainder of Paragraph 8.

11           9.     MILLENNIUM admits that MILLENNIUM'S Enlightened Kombucha  
12 products are sold at Whole Foods locations nationwide, including in California and  
13 New York. MILLENNIUM lacks knowledge or information sufficient to admit or  
14 deny the remainder of Paragraph 9, and on that basis, denies the remainder of  
15 Paragraph 9.

### 16                                   **JURISDICTION AND VENUE**

17           10.    MILLENNIUM avers that Paragraph 10 consists of legal arguments  
18 and conclusions to which no response is required. To the extent any response to  
19 Paragraph 10 is necessary, MILLENNIUM admits that this Court has jurisdiction  
20 over this action pursuant to 28 U.S.C. § 1332(d). MILLENNIUM further admits  
21 that Plaintiff has proposed that this action be treated as a class action in which some  
22 members of the putative class are citizens of states different from MILLENNIUM,  
23 and that, on the facts alleged in the COMPLAINT, the aggregate amount in  
24 controversy exceeds \$5,000,000. MILLENNIUM further admits that  
25 MILLENNIUM has sold hundreds of thousands of bottles of Enlightened  
26 Kombucha. MILLENNIUM specifically denies that the requisites for class action  
27 treatment are present, that this action could properly proceed as a class action, or  
28 that Plaintiff or the putative class are entitled to any relief whatsoever.

1 MILLENNIUM lacks knowledge or information sufficient to admit or deny the  
2 remainder of Paragraph 10, and on that basis, denies the remainder of Paragraph 10.

3 11. MILLENNIUM admits that MILLENNIUM is headquartered in  
4 California. MILLENNIUM avers that the remainder of Paragraph 11 consists of  
5 legal arguments and conclusions to which no response is required. To the extent  
6 any response to the remainder of Paragraph 11 is necessary, MILLENNIUM lacks  
7 knowledge or information sufficient to admit or deny the remainder of Paragraph  
8 11, and on that basis, denies the remainder of Paragraph 11.

9 12. MILLENNIUM admits that MILLENNIUM is headquartered in  
10 California. MILLENNIUM denies that the marketing, advertising, or product  
11 information of any MILLENNIUM product is or has ever been misleading or  
12 misbranded. MILLENNIUM avers that the remainder of Paragraph 12 consists of  
13 legal arguments and conclusions to which no response is required. To the extent  
14 any response to the remainder of Paragraph 12 is necessary, MILLENNIUM lacks  
15 knowledge or information sufficient to admit or deny the remainder of Paragraph  
16 12, and on that basis, denies the remainder of Paragraph 12.

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 13. MILLENNIUM admits that the name “kombucha” comes from the  
19 common name of a fermented tea drink, and that kombucha is made from a tea that  
20 ferments with the aid of a bacteria known as “scooby,” which can float at top of the  
21 fermenting tea. To the extent Paragraph 13 purports to quote excerpts from  
22 MILLENNIUM’s packaging, advertising, or marketing materials, MILLENNIUM  
23 refers to those materials as the best evidence of their own contents.  
24 MILLENNIUM avers that the remainder of Paragraph 13 is too vague to require a  
25 response, mischaracterizes the facts, and consists of legal arguments and  
26 conclusions to which no response is required. To the extent any response to the  
27 remainder of Paragraph 13 is required, MILLENNIUM denies the remainder of  
28 Paragraph 13.

1           14. MILLENNIUM admits, in 2010, some major retailers, including  
2 Whole Foods, stopped selling GT's Kombucha Beverages as a result of the  
3 potential that some kombucha products may contain greater than 0.5% alcohol by  
4 volume. MILLENNIUM further admits that, in 2010, Millennium released a line of  
5 "Enlightened" kombucha products, which was formulated to ensure that the  
6 products did not exceed 0.5% alcohol by volume, and a "Classic" line of kombucha  
7 products inspired by Millennium's original product formulas. To the extent  
8 Paragraph 14 purports to quote excerpts from MILLENNIUM's packaging,  
9 advertising, or marketing materials, MILLENNIUM refers to those materials as the  
10 best evidence of their own contents. MILLENNIUM avers that the remainder of  
11 Paragraph 14 is too vague to require a response, mischaracterizes the facts, and  
12 consists of legal arguments and conclusions to which no response is required. To  
13 the extent any response to the remainder of Paragraph 14 is required,  
14 MILLENNIUM denies the remainder of Paragraph 14.

15           15. To the extent Paragraph 15 purports to quote excerpts from  
16 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
17 refers to those materials as the best evidence of their own contents.  
18 MILLENNIUM avers that the remainder of Paragraph 15 does not consist of any  
19 allegations to which a response is required.

20           16. MILLENNIUM denies each and every allegation in Paragraph 16.

21           17. To the extent Paragraph 17 purports to quote excerpts from  
22 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
23 refers to those materials as the best evidence of their own contents. To the extent  
24 any response to the remainder of Paragraph 17 is necessary, MILLENNIUM lacks  
25 knowledge or information sufficient to admit or deny the remainder of Paragraph  
26 17, and on that basis, denies the remainder of Paragraph 17.

27           18. To the extent Paragraph 18 purports to quote excerpts from  
28 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM



1 refers to those materials as the best evidence of their own contents. To the extent  
2 any response to the remainder of Paragraph 18 is necessary, MILLENNIUM lacks  
3 knowledge or information sufficient to admit or deny the remainder of Paragraph  
4 18, and on that basis, denies the remainder of Paragraph 18.

5 19. To the extent Paragraph 19 purports to quote excerpts from  
6 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
7 refers to those materials as the best evidence of their own contents.  
8 MILLENNIUM denies that any of MILLENNIUM's Enlightened products are or  
9 have ever been alcoholic beverages or required to bear alcohol warnings. To the  
10 extent any response to the remainder of Paragraph 19 is necessary, MILLENNIUM  
11 lacks knowledge or information sufficient to admit or deny the remainder of  
12 Paragraph 19, and on that basis, denies the remainder of Paragraph 19.

13 20. To the extent Paragraph 20 purports to quote excerpts from  
14 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
15 refers to those materials as the best evidence of their own contents. To the extent  
16 any response to the remainder of Paragraph 20 is necessary, MILLENNIUM lacks  
17 knowledge or information sufficient to admit or deny the remainder of Paragraph  
18 20, and on that basis, denies the remainder of Paragraph 20.

19 21. MILLENNIUM avers that Paragraph 21 is too vague to require a  
20 response, as it does not specify which kombucha products are the subject of  
21 Paragraph 21, and on that basis, denies each and every allegation of Paragraph 21.

22 22. MILLENNIUM admits that both the "Classic" and "Enlightened"  
23 versions of MILLENNIUM's kombucha beverages are unpasteurized.  
24 MILLENNIUM avers that the remainder of Paragraph 22 is too vague to require a  
25 response, mischaracterizes the facts, and consists of legal arguments and  
26 conclusions to which no response is required. To the extent any response to the  
27 remainder of Paragraph 22 is required, MILLENNIUM denies the remainder of  
28 Paragraph 22.



1           23.   MILLENNIUM denies each and every allegation in Paragraph 23.

2           24.   To the extent Paragraph 24 purports to quote statements and/or  
3 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM  
4 refers to those statements and/or materials as the best evidence of their own  
5 contents. To the extent any response to the remainder of Paragraph 24 is necessary,  
6 MILLENNIUM lacks knowledge or information sufficient to admit or deny the  
7 remainder of Paragraph 24, and on that basis, denies the remainder of Paragraph 24.

8           25.   To the extent Paragraph 25 purports to quote statements and/or  
9 materials from the Maine Department of Agriculture, MILLENNIUM refers to  
10 those statements and/or materials as the best evidence of their own contents.  
11 MILLENNIUM admits that, in 2010, some retailers, including Whole Foods, pulled  
12 kombucha products, including GT's Kombucha products, off the shelves, as a result  
13 of the potential that some kombucha products may contain greater than 0.5%  
14 alcohol by volume. MILLENNIUM avers that the remainder of Paragraph 25 is too  
15 vague to require a response, mischaracterizes the facts, and consists of legal  
16 arguments and conclusions to which no response is required. To the extent any  
17 response to the remainder of Paragraph 25 is necessary, MILLENNIUM denies the  
18 remainder of Paragraph 25.

19           26.   To the extent Paragraph 26 purports to quote statements and/or  
20 materials from Honest Tea, MILLENNIUM refers to those statements and/or  
21 materials as the best evidence of their own contents. To the extent any response to  
22 the remainder of Paragraph 26 is necessary, MILLENNIUM lacks knowledge or  
23 information sufficient to admit or deny the remainder of Paragraph 26, and on that  
24 basis, denies the remainder of Paragraph 26.

25           27.   To the extent Paragraph 27 purports to quote statements and/or  
26 materials from GT Dave, MILLENNIUM refers to those statements and/or  
27 materials as the best evidence of their own contents. MILLENNIUM admits that  
28 products within the "Enlightened" line of GT's Kombucha contain raw and

1 unpasteurized kombucha. MILLENNIUM avers that the remainder of Paragraph 27  
2 is too vague to require a response, mischaracterizes the facts, and consists of legal  
3 arguments and conclusions to which no response is required. To the extent any  
4 response to the remainder of Paragraph 27 is necessary, MILLENNIUM denies the  
5 remainder of Paragraph 27.

6 28. MILLENNIUM lacks knowledge or information sufficient to admit or  
7 deny the allegations of Paragraph 28, and on that basis, denies each and every  
8 allegation of Paragraph 28.

9 29. MILLENNIUM lacks knowledge or information sufficient to admit or  
10 deny the allegations of Paragraph 29, and on that basis, denies each and every  
11 allegation of Paragraph 29.

12 30. MILLENNIUM lacks knowledge or information sufficient to admit or  
13 deny the allegations of Paragraph 30, and on that basis, denies each and every  
14 allegation of Paragraph 30.

15 31. MILLENNIUM lacks knowledge or information sufficient to admit or  
16 deny the allegations of Paragraph 31, and on that basis, denies each and every  
17 allegation of Paragraph 31.

18 32. MILLENNIUM lacks knowledge or information sufficient to admit or  
19 deny the allegations of Paragraph 32, and on that basis, denies each and every  
20 allegation of Paragraph 32.

21 33. MILLENNIUM lacks knowledge or information sufficient to admit or  
22 deny the allegations of Paragraph 33, and on that basis, denies each and every  
23 allegation of Paragraph 33.

24 34. MILLENNIUM lacks knowledge or information sufficient to admit or  
25 deny the allegations of Paragraph 34, and on that basis, denies each and every  
26 allegation of Paragraph 34.

27 35. To the extent Paragraph 35 purports to quote statements and/or  
28 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM

1 refers to those statements and/or materials as the best evidence of their own  
2 contents. To the extent any response to the remainder of Paragraph 35 is necessary,  
3 MILLENNIUM lacks knowledge or information sufficient to admit or deny the  
4 remainder of Paragraph 35, and on that basis, denies the remainder of Paragraph 35.

5 36. To the extent Paragraph 36 purports to quote statements and/or  
6 materials from the Alcohol and Tobacco Tax and Trade Bureau and/or state or  
7 federal laws and/or regulations, MILLENNIUM refers to those statements and/or  
8 materials as the best evidence of their own contents. To the extent any response to  
9 the remainder of Paragraph 36 is necessary, MILLENNIUM lacks knowledge or  
10 information sufficient to admit or deny the remainder of Paragraph 36, and on that  
11 basis, denies the remainder of Paragraph 36.

12 37. To the extent Paragraph 37 purports to quote statements and/or  
13 materials from state or federal laws and/or regulations, MILLENNIUM refers to  
14 those statements and/or materials as the best evidence of their own contents. To the  
15 extent any response to the remainder of Paragraph 37 is necessary, MILLENNIUM  
16 lacks knowledge or information sufficient to admit or deny the remainder of  
17 Paragraph 37, and on that basis, denies the remainder of Paragraph 37.

18 38. To the extent Paragraph 38 purports to quote statements and/or  
19 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM  
20 refers to those statements and/or materials as the best evidence of their own  
21 contents. To the extent any response to the remainder of Paragraph 38 is necessary,  
22 MILLENNIUM lacks knowledge or information sufficient to admit or deny the  
23 remainder of Paragraph 38, and on that basis, denies the remainder of Paragraph 38.

24 39. To the extent Paragraph 39 purports to quote statements and/or  
25 materials from the Alcohol and Tobacco Tax and Trade Bureau, MILLENNIUM  
26 refers to those statements and/or materials as the best evidence of their own  
27 contents. To the extent any response to the remainder of Paragraph 39 is necessary,  
28

1 MILLENNIUM lacks knowledge or information sufficient to admit or deny the  
2 remainder of Paragraph 39, and on that basis, denies the remainder of Paragraph 39.

3 40. MILLENNIUM denies that any MILLENNIUM product is or has ever  
4 been “misbranded under the FDA’s labeling requirements, California’s Sherman  
5 Food Drug & Cosmetic Law and New York’s Agriculture and Marketing Law.”  
6 discussed in greater detail below. To the extent Paragraph 40 purports to quote  
7 statements and/or materials from state or federal laws and/or regulations,  
8 MILLENNIUM refers to those statements and/or materials as the best evidence of  
9 their own contents. MILLENNIUM avers that the remainder of Paragraph 40  
10 consists of legal arguments and conclusions to which no response is required. To  
11 the extent any response to the remainder of Paragraph 40 is necessary,  
12 MILLENNIUM denies the remainder of Paragraph 40.

13 41. MILLENNIUM denies that any of MILLENNIUM’s Enlightened  
14 products contain or have ever contained “substantial amounts of alcohol.”  
15 MILLENNIUM further denies that any MILLENNIUM product is or has ever  
16 violated any state consumer health and safety regulations. To the extent Paragraph  
17 41 purports to quote statements and/or materials from state or federal laws and/or  
18 regulations, MILLENNIUM refers to those statements and/or materials as the best  
19 evidence of their own contents. MILLENNIUM avers that the remainder of  
20 Paragraph 41 consists of legal arguments and conclusions to which no response is  
21 required. To the extent any response to the remainder of Paragraph 41 is necessary,  
22 MILLENNIUM denies the remainder of Paragraph 41.

23 42. MILLENNIUM denies that any of MILLENNIUM’s Enlightened  
24 products are or have ever been “significantly above the 0.5 threshold at the time of  
25 sale and consumption” or “almost as alcoholic as traditional beer.” MILLENNIUM  
26 further denies that any MILLENNIUM has ever “distribute[d] Enlightened  
27 Kombucha in violation of Federal and State laws.” MILLENNIUM lacks  
28 knowledge or information sufficient to admit or deny the allegation that “Plaintiffs

1 do not know whether Enlightened Kombucha is below 0.5 alcohol by volume at the  
2 moment it leaves Millennium's distribution center," and on that basis, deny this  
3 allegation. MILLENNIUM avers that the remainder of Paragraph 42 consists of  
4 legal arguments and conclusions to which no response is required. To the extent  
5 any response to the remainder of Paragraph 42 is necessary, MILLENNIUM denies  
6 the remainder of Paragraph 42.

7 43. To the extent Paragraph 43 purports to quote statements and/or  
8 materials from GT Dave, MILLENNIUM refers to those statements and/or  
9 materials as the best evidence of their own contents. MILLENNIUM avers that the  
10 remainder of Paragraph 43 consists of legal arguments and conclusions to which no  
11 response is required. To the extent any response to the remainder of Paragraph 43  
12 is necessary, MILLENNIUM denies the remainder of Paragraph 43.

13 44. To the extent Paragraph 44 purports to quote excerpts from  
14 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
15 refers to those materials as the best evidence of their own contents.  
16 MILLENNIUM avers that the remainder of Paragraph 44 consists of legal  
17 arguments and conclusions to which no response is required. To the extent any  
18 response to the remainder of Paragraph 44 is necessary, MILLENNIUM denies the  
19 remainder of Paragraph 44.

20 45. To the extent Paragraph 45 purports to quote excerpts from  
21 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
22 refers to those materials as the best evidence of their own contents.  
23 MILLENNIUM avers that the remainder of Paragraph 45 consists of legal  
24 arguments and conclusions to which no response is required. To the extent any  
25 response to the remainder of Paragraph 45 is necessary, MILLENNIUM denies the  
26 remainder of Paragraph 45.

27 46. MILLENNIUM avers that Paragraph 46 consists of legal arguments  
28 and conclusions to which no response is required. To the extent any response to

1 Paragraph 46 is necessary, MILLENNIUM denies each and every allegation of  
2 Paragraph 46.

3 47. MILLENNIUM admits that kombucha is a type of tea. To the extent  
4 Paragraph 47 purports to quote excerpts from MILLENNIUM's packaging,  
5 advertising, or marketing materials, MILLENNIUM refers to those materials as the  
6 best evidence of their own contents. MILLENNIUM avers that the remainder of  
7 Paragraph 47 consists of legal arguments and conclusions to which no response is  
8 required. To the extent any response to the remainder of Paragraph 47 is necessary,  
9 MILLENNIUM denies the remainder of Paragraph 47. MILLENNIUM  
10 specifically denies that any of MILLENNIUM's labels are or have ever been  
11 "misbranded and misleading."

12 48. To the extent Paragraph 48 purports to quote excerpts from  
13 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
14 refers to those materials as the best evidence of their own contents.  
15 MILLENNIUM avers that the remainder of Paragraph 48 consists of legal  
16 arguments and conclusions to which no response is required. To the extent any  
17 response to the remainder of Paragraph 48 is necessary, MILLENNIUM denies the  
18 remainder of Paragraph 48. MILLENNIUM specifically denies that any statements  
19 on MILLENNIUM's labels have ever or currently "characteriz[e] the level of  
20 antioxidants" in MILLENNIUM products.

21 49. To the extent Paragraph 49 purports to quote excerpts from  
22 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
23 refers to those materials as the best evidence of their own contents.  
24 MILLENNIUM avers that the remainder of Paragraph 49 consists of legal  
25 arguments and conclusions to which no response is required. To the extent any  
26 response to the remainder of Paragraph 49 is necessary, MILLENNIUM denies the  
27 remainder of Paragraph 49. MILLENNIUM specifically denies that any statements  
28

1 on MILLENNIUM's labels have ever or currently "characteriz[e] the level of  
2 antioxidants" in MILLENNIUM products.

3 50. To the extent Paragraph 50 purports to quote excerpts from  
4 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
5 refers to those materials as the best evidence of their own contents. To the extent  
6 any response to the remainder of Paragraph 50 is necessary, MILLENNIUM lacks  
7 knowledge or information sufficient to admit or deny the remainder of Paragraph  
8 50, and on that basis, denies the remainder of Paragraph 50.

9 51. MILLENNIUM denies each and every allegation of Paragraph 51.

10 52. To the extent Paragraph 52 purports to quote statements and/or  
11 materials from state or federal laws and/or regulations, MILLENNIUM refers to  
12 those statements and/or materials as the best evidence of their own contents.  
13 MILLENNIUM avers that the remainder of Paragraph 52 consists of legal  
14 arguments and conclusions to which no response is required. To the extent any  
15 response to the remainder of Paragraph 52 is necessary, MILLENNIUM denies the  
16 remainder of Paragraph 52.

17 53. To the extent Paragraph 53 purports to quote statements and/or  
18 materials from state or federal laws and/or regulations, MILLENNIUM refers to  
19 those statements and/or materials as the best evidence of their own contents.  
20 MILLENNIUM avers that the remainder of Paragraph 53 consists of legal  
21 arguments and conclusions to which no response is required. To the extent any  
22 response to the remainder of Paragraph 53 is necessary, MILLENNIUM denies the  
23 remainder of Paragraph 53.

24 54. To the extent Paragraph 54 purports to quote statements and/or  
25 materials from state or federal laws and/or regulations, MILLENNIUM refers to  
26 those statements and/or materials as the best evidence of their own contents.  
27 MILLENNIUM avers that the remainder of Paragraph 54 consists of legal  
28 arguments and conclusions to which no response is required. To the extent any



1 response to the remainder of Paragraph 54 is necessary, MILLENNIUM denies the  
2 remainder of Paragraph 54.

3 55. To the extent Paragraph 55 purports to quote statements and/or  
4 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM  
5 refers to those statements and/or materials as the best evidence of their own  
6 contents. MILLENNIUM avers that the remainder of Paragraph 55 consists of  
7 legal arguments and conclusions to which no response is required. To the extent  
8 any response to the remainder of Paragraph 55 is necessary, MILLENNIUM denies  
9 the remainder of Paragraph 55.

10 56. To the extent Paragraph 56 purports to quote statements and/or  
11 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM  
12 refers to those statements and/or materials as the best evidence of their own  
13 contents. MILLENNIUM avers that the remainder of Paragraph 56 consists of  
14 legal arguments and conclusions to which no response is required. To the extent  
15 any response to the remainder of Paragraph 56 is necessary, MILLENNIUM denies  
16 the remainder of Paragraph 56.

17 57. To the extent Paragraph 57 purports to quote excerpts from  
18 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
19 refers to those materials as the best evidence of their own contents. To the extent  
20 Paragraph 57 purports to quote statements and/or materials from the FDA or state  
21 or federal laws and/or regulations, MILLENNIUM refers to those statements and/or  
22 materials as the best evidence of their own contents. MILLENNIUM avers that the  
23 remainder of Paragraph 57 consists of legal arguments and conclusions to which no  
24 response is required. To the extent any response to the remainder of Paragraph 57  
25 is necessary, MILLENNIUM denies the remainder of Paragraph 57.  
26 MILLENNIUM specifically denies that the "marketing of EGCG as the  
27 antioxidants in Enlightened Kombucha is misleading and misbrands the products."  
28

1           58. To the extent Paragraph 58 purports to quote excerpts from  
2 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
3 refers to those materials as the best evidence of their own contents. To the extent  
4 Paragraph 58 purports to quote statements and/or materials from the FDA or state  
5 or federal laws and/or regulations, MILLENNIUM refers to those statements and/or  
6 materials as the best evidence of their own contents. MILLENNIUM avers that the  
7 remainder of Paragraph 58 consists of legal arguments and conclusions to which no  
8 response is required. To the extent any response to the remainder of Paragraph 58  
9 is necessary, MILLENNIUM denies the remainder of Paragraph 58.  
10 MILLENNIUM specifically denies that any statement on MILLENNIUM's labels,  
11 past or present, "misbrands the products, and misleads consumers."

12           59. To the extent Paragraph 59 purports to quote excerpts from  
13 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
14 refers to those materials as the best evidence of their own contents. To the extent  
15 Paragraph 59 purports to quote statements and/or materials from the FDA or state  
16 or federal laws and/or regulations, MILLENNIUM refers to those statements and/or  
17 materials as the best evidence of their own contents. MILLENNIUM avers that the  
18 remainder of Paragraph 59 consists of legal arguments and conclusions to which no  
19 response is required. To the extent any response to the remainder of Paragraph 59  
20 is necessary, MILLENNIUM denies the remainder of Paragraph 59.

21           60. To the extent Paragraph 60 purports to quote statements and/or  
22 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM  
23 refers to those statements and/or materials as the best evidence of their own  
24 contents. MILLENNIUM avers that the remainder of Paragraph 60 consists of  
25 legal arguments and conclusions to which no response is required. To the extent  
26 any response to the remainder of Paragraph 60 is necessary, MILLENNIUM denies  
27 the remainder of Paragraph 60.  
28

1           61.   MILLENNIUM avers that Paragraph 61 consists of legal arguments  
2 and conclusions to which no response is required. To the extent any response to  
3 Paragraph 61 is necessary, MILLENNIUM denies each and every allegation of  
4 Paragraph 61. MILLENNIUM specifically denies that “Millennium’s marketing  
5 campaign for Enlightened Kombucha is centered on the characterization of the level  
6 of antioxidants in the products and the use of nutrient content claims using the term  
7 ‘antioxidant.’” MILLENNIUM further denies that any MILLENNIUM Product is  
8 or has ever been “misbranded in violation of parallel state and federal laws.”

9           62.   MILLENNIUM avers that Paragraph 62 consists of legal arguments  
10 and conclusions to which no response is required. To the extent any response to  
11 Paragraph 62 is necessary, MILLENNIUM denies each and every allegation of  
12 Paragraph 62. MILLENNIUM specifically denies that the requisites for class  
13 action treatment are present and that this action could properly proceed as a class  
14 action.

15           63.   To the extent Paragraph 63 purports to quote statements and/or  
16 materials from Bossa Nova, MILLENNIUM refers to those statements and/or  
17 materials as the best evidence of their own contents. MILLENNIUM denies the  
18 remainder of Paragraph 63.

19           64.   To the extent Paragraph 64 purports to quote statements and/or  
20 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM  
21 refers to those statements and/or materials as the best evidence of their own  
22 contents. MILLENNIUM avers that the remainder of Paragraph 64 is too vague to  
23 require a response, mischaracterizes the facts, and consists of legal arguments and  
24 conclusions to which no response is required. To the extent any response to the  
25 remainder of Paragraph 64 is necessary, MILLENNIUM denies the remainder of  
26 Paragraph 64.

27           65.   To the extent Paragraph 65 purports to quote statements and/or  
28 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM

1 refers to those statements and/or materials as the best evidence of their own  
2 contents. MILLENNIUM avers that the remainder of Paragraph 65 consists of  
3 legal arguments and conclusions to which no response is required. To the extent  
4 any response to the remainder of Paragraph 65 is necessary, MILLENNIUM denies  
5 the remainder of Paragraph 65.

6 66. To the extent Paragraph 66 purports to quote statements and/or  
7 materials from the FDA or state or federal laws and/or regulations, MILLENNIUM  
8 refers to those statements and/or materials as the best evidence of their own  
9 contents. MILLENNIUM avers that the remainder of Paragraph 66 consists of  
10 legal arguments and conclusions to which no response is required. To the extent  
11 any response to the remainder of Paragraph 66 is necessary, MILLENNIUM denies  
12 the remainder of Paragraph 66.

13 67. MILLENNIUM avers that Paragraph 67 consists of legal arguments  
14 and conclusions to which no response is required. To the extent any response  
15 Paragraph 67 is necessary, MILLENNIUM denies each and every allegation of  
16 Paragraph 67.

17 68. To the extent Paragraph 68 purports to quote statements and/or  
18 materials from “medical professionals,” MILLENNIUM refers to those statements  
19 and/or materials as the best evidence of their own contents. MILLENNIUM avers  
20 that the remainder of Paragraph 68 consists of legal arguments and conclusions to  
21 which no response is required. To the extent any response to the remainder of  
22 Paragraph 68 is necessary, MILLENNIUM denies the remainder of Paragraph 68.

23 69. To the extent Paragraph 69 purports to quote statements and/or  
24 materials from the Harvard School of Public Health, MILLENNIUM refers to those  
25 statements and/or materials as the best evidence of their own contents.  
26 MILLENNIUM avers that the remainder of Paragraph 69 consists of legal  
27 arguments and conclusions to which no response is required. To the extent any  
28

1 response to the remainder of Paragraph 69 is necessary, MILLENNIUM denies the  
2 remainder of Paragraph 69.

3 70. To the extent Paragraph 70 purports to quote statements and/or  
4 materials from scientific and/or medical literature, MILLENNIUM refers to those  
5 statements and/or materials as the best evidence of their own contents.  
6 MILLENNIUM avers that the remainder of Paragraph 70 consists of legal  
7 arguments and conclusions to which no response is required. To the extent any  
8 response to the remainder of Paragraph 70 is necessary, MILLENNIUM denies the  
9 remainder of Paragraph 70.

10 71. MILLENNIUM denies each and every allegation of Paragraph 71.

11 **CLASS REPRESENTATION ALLEGATIONS**

12 72. MILLENNIUM avers that Paragraph 72 does not allege facts that  
13 MILLENNIUM is required to admit or deny. To the extent any response is  
14 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
15 deny the allegations of Paragraph 72, and on that basis, denies each and every  
16 allegation of Paragraph 72. MILLENNIUM specifically denies that the requisites  
17 for class action treatment are present and that this action could properly proceed as  
18 a class action.

19 73. MILLENNIUM avers that Paragraph 73 does not allege facts that  
20 MILLENNIUM is required to admit or deny. To the extent any response is  
21 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
22 deny the allegations of Paragraph 73, and on that basis, denies each and every  
23 allegation of Paragraph 73. MILLENNIUM specifically denies that the requisites  
24 for class action treatment are present and that this action could properly proceed as  
25 a class action.

26 74. MILLENNIUM avers that Paragraph 74 does not allege facts that  
27 MILLENNIUM is required to admit or deny. To the extent any response is  
28 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or

1 deny the allegations of Paragraph 74, and on that basis, denies each and every  
2 allegation of Paragraph 74. MILLENNIUM specifically denies that the requisites  
3 for class action treatment are present and that this action could properly proceed as  
4 a class action.

5 75. MILLENNIUM avers that Paragraph 75 does not allege facts that  
6 MILLENNIUM is required to admit or deny. To the extent any response is  
7 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
8 deny the allegations of Paragraph 75, and on that basis, denies each and every  
9 allegation of Paragraph 75. MILLENNIUM specifically denies that the requisites  
10 for class action treatment are present and that this action could properly proceed as  
11 a class action.

12 76. MILLENNIUM avers that Paragraph 76 does not allege facts that  
13 MILLENNIUM is required to admit or deny. To the extent any response is  
14 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
15 deny the allegations of Paragraph 76, and on that basis, denies each and every  
16 allegation of Paragraph 76. MILLENNIUM specifically denies that the requisites  
17 for class action treatment are present and that this action could properly proceed as  
18 a class action.

19 77. MILLENNIUM avers that Paragraph 77 does not allege facts that  
20 MILLENNIUM is required to admit or deny. To the extent any response is  
21 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
22 deny the allegations of Paragraph 77, and on that basis, denies each and every  
23 allegation of Paragraph 77. MILLENNIUM specifically denies that the requisites  
24 for class action treatment are present and that this action could properly proceed as  
25 a class action.

26 78. MILLENNIUM avers that Paragraph 78 does not allege facts that  
27 MILLENNIUM is required to admit or deny. To the extent any response is  
28 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or

1 deny the allegations of Paragraph 78, and on that basis, denies each and every  
2 allegation of Paragraph 78. MILLENNIUM specifically denies that the requisites  
3 for class action treatment are present and that this action could properly proceed as  
4 a class action.

5 79. MILLENNIUM avers that Paragraph 79 does not allege facts that  
6 MILLENNIUM is required to admit or deny. To the extent any response is  
7 necessary, MILLENNIUM denies each and every allegation of Paragraph 79.  
8 MILLENNIUM specifically denies that the requisites for class action treatment are  
9 present and that this action could properly proceed as a class action.

10 80. MILLENNIUM avers that Paragraph 80 does not allege facts that  
11 MILLENNIUM is required to admit or deny. To the extent any response is  
12 necessary, MILLENNIUM denies each and every allegation of Paragraph 80.  
13 MILLENNIUM specifically denies that the requisites for class action treatment are  
14 present and that this action could properly proceed as a class action.

15 81. MILLENNIUM avers that Paragraph 81 does not allege facts that  
16 MILLENNIUM is required to admit or deny. To the extent any response is  
17 necessary, MILLENNIUM denies each and every allegation of Paragraph 81.  
18 MILLENNIUM specifically denies that the requisites for class action treatment are  
19 present and that this action could properly proceed as a class action.

20 82. MILLENNIUM avers that Paragraph 82 does not allege facts that  
21 MILLENNIUM is required to admit or deny. To the extent any response is  
22 necessary, MILLENNIUM denies each and every allegation of Paragraph 82.  
23 MILLENNIUM specifically denies that the requisites for class action treatment are  
24 present and that this action could properly proceed as a class action.

25 83. MILLENNIUM avers that Paragraph 83 does not allege facts that  
26 MILLENNIUM is required to admit or deny. To the extent any response is  
27 necessary, MILLENNIUM denies each and every allegation of Paragraph 83.  
28



1 MILLENNIUM specifically denies that the requisites for class action treatment are  
2 present and that this action could properly proceed as a class action.

3 **COUNT I**

4 84. MILLENNIUM incorporates by reference the responses to Paragraphs  
5 1 through 83 set forth in this Answer as though fully set forth herein.

6 85. MILLENNIUM avers that Paragraph 85 does not allege facts that  
7 MILLENNIUM is required to admit or deny. To the extent any response is  
8 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
9 deny the allegations of Paragraph 85, and on that basis, denies each and every  
10 allegation of Paragraph 85. MILLENNIUM specifically denies that the requisites  
11 for class action treatment are present and that this action could properly proceed as  
12 a class action.

13 86. MILLENNIUM avers that Paragraph 86 does not allege facts that  
14 MILLENNIUM is required to admit or deny. To the extent any response is  
15 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
16 deny the allegations of Paragraph 86, and on that basis, denies each and every  
17 allegation of Paragraph 86. MILLENNIUM specifically denies that the requisites  
18 for class action treatment are present and that this action could properly proceed as  
19 a class action.

20 87. MILLENNIUM avers that Paragraph 87 does not allege facts that  
21 MILLENNIUM is required to admit or deny. To the extent any response is  
22 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
23 deny the allegations of Paragraph 87, and on that basis, denies each and every  
24 allegation of Paragraph 87. MILLENNIUM specifically denies that the requisites  
25 for class action treatment are present and that this action could properly proceed as  
26 a class action.

27 88. MILLENNIUM avers that Paragraph 88 does not allege facts that  
28 MILLENNIUM is required to admit or deny. To the extent any response is

1 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
2 deny the allegations of Paragraph 88, and on that basis, denies each and every  
3 allegation of Paragraph 88.

4 89. To the extent Paragraph 89 purports to quote excerpts from  
5 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
6 refers to those materials as the best evidence of their own contents.  
7 MILLENNIUM avers that the remainder of Paragraph 89 does not allege facts that  
8 MILLENNIUM is required to admit or deny. To the extent any response is  
9 necessary, MILLENNIUM denies the remainder of Paragraph 89. MILLENNIUM  
10 specifically denies that the requisites for class action treatment are present and that  
11 this action could properly proceed as a class action.

12 90. To the extent Paragraph 90 purports to quote excerpts from  
13 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
14 refers to those materials as the best evidence of their own contents.  
15 MILLENNIUM avers that the remainder of Paragraph 90 does not allege facts that  
16 MILLENNIUM is required to admit or deny. To the extent any response is  
17 necessary, MILLENNIUM denies the remainder of Paragraph 90.

18 91. MILLENNIUM avers that Paragraph 91 does not allege facts that  
19 MILLENNIUM is required to admit or deny. To the extent any response is  
20 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
21 deny the allegations of Paragraph 91, and on that basis, denies each and every  
22 allegation of Paragraph 91.

23 92. MILLENNIUM avers that Paragraph 92 does not allege facts that  
24 MILLENNIUM is required to admit or deny. To the extent any response is  
25 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
26 deny the allegations of Paragraph 92, and on that basis, denies each and every  
27 allegation of Paragraph 92.  
28

1           93.   MILLENNIUM avers that Paragraph 93 does not allege facts that  
2   MILLENNIUM is required to admit or deny. To the extent any response is  
3   necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
4   deny the allegations of Paragraph 93, and on that basis, denies each and every  
5   allegation of Paragraph 93.

6           94.   MILLENNIUM avers that Paragraph 94 does not allege facts that  
7   MILLENNIUM is required to admit or deny. To the extent any response is  
8   necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
9   deny the allegations of Paragraph 94, and on that basis, denies each and every  
10   allegation of Paragraph 94. MILLENNIUM specifically denies that the requisites  
11   for class action treatment are present and that this action could properly proceed as  
12   a class action.

13          95.   MILLENNIUM avers that Paragraph 95 does not allege facts that  
14   MILLENNIUM is required to admit or deny. To the extent any response is  
15   necessary, MILLENNIUM denies each and every allegation of Paragraph 95.  
16   MILLENNIUM specifically denies that the requisites for class action treatment are  
17   present and that this action could properly proceed as a class action.

18          96.   MILLENNIUM admits that Exhibit K to the COMPLAINT is a CLRA  
19   notice letter that was sent to MILLENNIUM prior to the filing of the  
20   COMPLAINT, but denies that this letter “complies in all respects with California  
21   Civil Code § 1782.” MILLENNIUM avers that Paragraph 96 does not allege facts  
22   that MILLENNIUM is required to admit or deny. To the extent any response is  
23   necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
24   deny the allegations of Paragraph 96, and on that basis, denies each and every  
25   allegation of Paragraph 96. MILLENNIUM specifically denies that the requisites  
26   for class action treatment are present and that this action could properly proceed as  
27   a class action.  
28

1           97.     MILLENNIUM admits that Exhibit L to the COMPLAINT is a CLRA  
2 notice letter addressed to Whole Foods Market, Inc. MILLENNIUM lacks  
3 knowledge or information sufficient to admit or deny the allegations of Paragraph  
4 97, and on that basis, denies each and every allegation of Paragraph 97.

5           98.     MILLENNIUM avers that Paragraph 98 does not allege facts that  
6 MILLENNIUM is required to admit or deny. To the extent any response is  
7 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
8 deny the allegations of Paragraph 98, and on that basis, denies each and every  
9 allegation of Paragraph 98. MILLENNIUM specifically denies that PLAINTIFFS  
10 have the requisite standing to seek injunctive relief, or that PLAINTIFFS or the  
11 putative class are entitled to any relief whatsoever.

## 12                                   **COUNT II**

13           99.     MILLENNIUM incorporates by reference the responses to Paragraphs  
14 1 through 98 set forth in this Answer as though fully set forth herein.

15           100.    MILLENNIUM avers that Paragraph 100 does not allege facts that  
16 MILLENNIUM is required to admit or deny. To the extent any response is  
17 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
18 deny the allegations of Paragraph 100, and on that basis, denies each and every  
19 allegation of Paragraph 100. MILLENNIUM specifically denies that the requisites  
20 for class action treatment are present and that this action could properly proceed as  
21 a class action.

22           101.    MILLENNIUM avers that Paragraph 101 does not allege facts that  
23 MILLENNIUM is required to admit or deny. To the extent any response is  
24 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
25 deny the allegations of Paragraph 101, and on that basis, denies each and every  
26 allegation of Paragraph 101. MILLENNIUM specifically denies that the requisites  
27 for class action treatment are present and that this action could properly proceed as  
28 a class action.

1           102. MILLENNIUM avers that Paragraph 102 does not allege facts that  
2 MILLENNIUM is required to admit or deny. To the extent any response is  
3 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
4 deny the allegations of Paragraph 102, and on that basis, denies each and every  
5 allegation of Paragraph 102.

6           103. To the extent Paragraph 103 purports to quote excerpts from  
7 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
8 refers to those materials as the best evidence of their own contents.  
9 MILLENNIUM avers that the remainder of Paragraph 103 does not allege facts that  
10 MILLENNIUM is required to admit or deny. To the extent any response is  
11 necessary, MILLENNIUM denies the remainder of Paragraph 103.  
12 MILLENNIUM specifically denies that the requisites for class action treatment are  
13 present and that this action could properly proceed as a class action.

14           104. To the extent Paragraph 104 purports to quote excerpts from  
15 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
16 refers to those materials as the best evidence of their own contents.  
17 MILLENNIUM avers that the remainder of Paragraph 104 does not allege facts that  
18 MILLENNIUM is required to admit or deny. To the extent any response is  
19 necessary, MILLENNIUM denies the remainder of Paragraph 104.

20           105. MILLENNIUM avers that Paragraph 105 does not allege facts that  
21 MILLENNIUM is required to admit or deny. To the extent any response is  
22 necessary, MILLENNIUM denies each and every allegation of Paragraph 105.

23           106. MILLENNIUM avers that Paragraph 106 does not allege facts that  
24 MILLENNIUM is required to admit or deny. To the extent any response is  
25 necessary, MILLENNIUM denies each and every allegation of Paragraph 106.

26           107. MILLENNIUM avers that Paragraph 107 does not allege facts that  
27 MILLENNIUM is required to admit or deny. To the extent any response is  
28 necessary, MILLENNIUM denies each and every allegation of Paragraph 107.

1 MILLENNIUM specifically denies that the requisites for class action treatment are  
2 present and that this action could properly proceed as a class action.

3 108. MILLENNIUM avers that Paragraph 108 does not allege facts that  
4 MILLENNIUM is required to admit or deny. To the extent any response is  
5 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
6 deny the allegations of Paragraph 108, and on that basis, denies each and every  
7 allegation of Paragraph 108. MILLENNIUM specifically denies that the requisites  
8 for class action treatment are present and that this action could properly proceed as  
9 a class action.

10 109. MILLENNIUM avers that Paragraph 109 does not allege facts that  
11 MILLENNIUM is required to admit or deny. To the extent any response is  
12 necessary, MILLENNIUM denies each and every allegation of Paragraph 109.  
13 MILLENNIUM specifically denies that the requisites for class action treatment are  
14 present and that this action could properly proceed as a class action.

### 15 **COUNT III**

16 110. MILLENNIUM incorporates by reference the responses to Paragraphs  
17 1 through 109 set forth in this Answer as though fully set forth herein.

18 111. MILLENNIUM avers that Paragraph 111 does not allege facts that  
19 MILLENNIUM is required to admit or deny. To the extent any response is  
20 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
21 deny the allegations of Paragraph 111, and on that basis, denies each and every  
22 allegation of Paragraph 111. MILLENNIUM specifically denies that the requisites  
23 for class action treatment are present and that this action could properly proceed as  
24 a class action.

25 112. MILLENNIUM avers that Paragraph 112 does not allege facts that  
26 MILLENNIUM is required to admit or deny. To the extent any response is  
27 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
28 deny the allegations of Paragraph 112, and on that basis, denies each and every

1 allegation of Paragraph 112. MILLENNIUM specifically denies that the requisites  
2 for class action treatment are present and that this action could properly proceed as  
3 a class action.

4 113. MILLENNIUM avers that Paragraph 113 does not allege facts that  
5 MILLENNIUM is required to admit or deny. To the extent any response is  
6 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
7 deny the allegations of Paragraph 113, and on that basis, denies each and every  
8 allegation of Paragraph 113.

9 114. MILLENNIUM avers that Paragraph 114 does not allege facts that  
10 MILLENNIUM is required to admit or deny. To the extent any response is  
11 necessary, MILLENNIUM denies each and every allegation of Paragraph 114.

12 115. To the extent Paragraph 115 purports to quote excerpts from  
13 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
14 refers to those materials as the best evidence of their own contents.  
15 MILLENNIUM avers that the remainder of Paragraph 115 does not allege facts that  
16 MILLENNIUM is required to admit or deny. To the extent any response is  
17 necessary, MILLENNIUM denies the remainder of Paragraph 115.  
18 MILLENNIUM specifically denies that the requisites for class action treatment are  
19 present and that this action could properly proceed as a class action.

20 116. To the extent Paragraph 116 purports to quote excerpts from  
21 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
22 refers to those materials as the best evidence of their own contents.  
23 MILLENNIUM avers that the remainder of Paragraph 116 does not allege facts that  
24 MILLENNIUM is required to admit or deny. To the extent any response is  
25 necessary, MILLENNIUM denies the remainder of Paragraph 116.

26 117. MILLENNIUM avers that Paragraph 117 does not allege facts that  
27 MILLENNIUM is required to admit or deny. To the extent any response is  
28 necessary, MILLENNIUM denies each and every allegation of Paragraph 117.



1 MILLENNIUM specifically denies that the requisites for class action treatment are  
2 present and that this action could properly proceed as a class action.

3 118. MILLENNIUM avers that Paragraph 118 does not allege facts that  
4 MILLENNIUM is required to admit or deny. To the extent any response is  
5 necessary, MILLENNIUM denies each and every allegation of Paragraph 118.

6 119. MILLENNIUM avers that Paragraph 119 does not allege facts that  
7 MILLENNIUM is required to admit or deny. To the extent any response is  
8 necessary, MILLENNIUM denies each and every allegation of Paragraph 119.

9 MILLENNIUM specifically denies that the requisites for class action treatment are  
10 present and that this action could properly proceed as a class action.

#### 11 COUNT IV

12 120. MILLENNIUM incorporates by reference the responses to Paragraphs  
13 1 through 119 set forth in this Answer as though fully set forth herein.

14 121. MILLENNIUM avers that Paragraph 121 does not allege facts that  
15 MILLENNIUM is required to admit or deny. To the extent any response is  
16 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
17 deny the allegations of Paragraph 121, and on that basis, denies each and every  
18 allegation of Paragraph 121. MILLENNIUM specifically denies that the requisites  
19 for class action treatment are present and that this action could properly proceed as  
20 a class action.

21 122. MILLENNIUM avers that Paragraph 122 does not allege facts that  
22 MILLENNIUM is required to admit or deny. To the extent any response is  
23 necessary, MILLENNIUM lacks knowledge or information sufficient to admit or  
24 deny the allegations of Paragraph 122, and on that basis, denies each and every  
25 allegation of Paragraph 122.

26 123. To the extent Paragraph 123 purports to quote excerpts from  
27 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
28 refers to those materials as the best evidence of their own contents.

1 MILLENNIUM avers that the remainder of Paragraph 123 does not allege facts that  
2 MILLENNIUM is required to admit or deny. To the extent any response is  
3 necessary, MILLENNIUM denies the remainder of Paragraph 123.

4 124. To the extent Paragraph 124 purports to quote excerpts from  
5 MILLENNIUM's packaging, advertising, or marketing materials, MILLENNIUM  
6 refers to those materials as the best evidence of their own contents.  
7 MILLENNIUM avers that the remainder of Paragraph 124 does not allege facts that  
8 MILLENNIUM is required to admit or deny. To the extent any response is  
9 necessary, MILLENNIUM denies the remainder of Paragraph 124.

10 125. MILLENNIUM avers that Paragraph 125 does not allege facts that  
11 MILLENNIUM is required to admit or deny. To the extent any response is  
12 necessary, MILLENNIUM denies each and every allegation of Paragraph 125.

13 126. MILLENNIUM avers that Paragraph 126 does not allege facts that  
14 MILLENNIUM is required to admit or deny. To the extent any response is  
15 necessary, MILLENNIUM denies each and every allegation of Paragraph 126.

16 127. MILLENNIUM avers that Paragraph 127 does not allege facts that  
17 MILLENNIUM is required to admit or deny. To the extent any response is  
18 necessary, MILLENNIUM denies each and every allegation of Paragraph 127.  
19 MILLENNIUM specifically denies that the requisites for class action treatment are  
20 present and that this action could properly proceed as a class action.

21 **PRAYER FOR RELIEF**

22 MILLENNIUM avers that Plaintiff's Prayer for Relief does not allege facts  
23 that MILLENNIUM is required to admit or deny. To the extent any response is  
24 necessary, MILLENNIUM denies each and every allegation contained therein, and  
25 any entitlement of Plaintiff or members of the putative class to any relief  
26 whatsoever. MILLENNIUM specifically denies that the requisites for class action  
27 treatment are present and that this action could properly proceed as a class action.  
28

**DEMAND FOR JURY TRIAL**

MILLENNIUM does not oppose PLAINTIFFS' demand for a jury trial in this action as to all issues so triable.

**AFFIRMATIVE DEFENSES**

While specifically denying any liability to PLAINTIFFS and members of the purported class, or anyone, and that the requisites for class action treatment are present and that this action could properly proceed as a class action, and without assuming any legal or factual burden not otherwise assigned to it by virtue of listing these affirmative defenses, MILLENNIUM asserts the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim)**

The COMPLAINT fails to state any claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(Lack of Standing)**

The COMPLAINT may be barred, in whole or in part, for lack of standing.

**THIRD AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

The COMPLAINT may be time-barred, in whole or in part, under applicable statutes of limitations, including but not limited to, California Civil Code § 1783, California Business and Professions Code § 17208, California Code of Civil Procedure §§ 312 through 365, inclusive, and N.Y. Civil Practice Law and Rules § 214.

**FOURTH AFFIRMATIVE DEFENSE**

**(Laches)**

The COMPLAINT may be barred, in whole or in part, by the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

**(First Amendment)**

The COMPLAINT may be barred, in whole or in part, by the First Amendment to the United States Constitution.

**SIXTH AFFIRMATIVE DEFENSE**

**(Plaintiff and Third-Party Fault)**

The COMPLAINT may be barred, in whole or in part, because the alleged injuries or damages complained of by PLAINTIFFS and/or members of the purported class, if there actually were any, were caused by the acts or omissions of PLAINTIFFS and/or third parties over whom MILLENNIUM had no control or right of control.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Intervening and Superseding Causes)**

The COMPLAINT may be barred, in whole or in part, because the alleged injuries or damage complained of by PLAINTIFFS and/or members of the purported class, if there actually were any, were caused by the intervening and superseding events and/or actions of persons or entities other than MILLENNIUM.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Causation)**

The COMPLAINT may be barred, in whole or in part, barred, because any alleged injury to PLAINTIFFS was not caused by MILLENNIUM'S conduct.

**NINTH AFFIRMATIVE DEFENSE**

**(No Damages)**

The COMPLAINT may be barred, in whole or in part, barred, because PLAINTIFFS have not suffered any damages.

**TENTH AFFIRMATIVE DEFENSE**

**(No Injury)**

The COMPLAINT be barred, in whole or in part, barred, because PLAINTIFFS have not suffered any cognizable injury.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(No Reliance)**

The COMPLAINT may be barred, in whole or in part, barred, because PLAINTIFFS did not justifiably and/or reasonably rely on any false or misleading statement or omission by MILLENNIUM.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Good Faith/Reasonable Belief as to Accuracy and Validity)**

The COMPLAINT may be barred, in whole or in part, because at all times at issue herein MILLENNIUM'S conduct was in good faith and/or because any representations or statements alleged to have been made by MILLENNIUM were true and accurate at the time made and/or otherwise were made in good faith and with a reasonable belief as to their validity and accuracy and with a reasonable belief that all of MILLENNIUM'S conduct was lawful.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Justification)**

The COMPLAINT may be barred, in whole or in part, because MILLENNIUM'S conduct was at all times justified and/or privileged or immunized on the basis of business justification and/or the business judgment rule.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Safe Harbor)**

The COMPLAINT may be barred, in whole or in part, because MILLENNIUM's business practices were and are not unfair, unlawful, fraudulent, deceptive, and/or likely to mislead because MILLENNIUM's conduct falls within a

1 safe harbor created by law and/or because PLAINTIFFS' claims are barred by the  
2 doctrines of statutory and regulatory compliance.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 **(Inadequate Notice)**

5 The COMPLAINT may be barred, in whole or in part, by PLAINTIFFS'  
6 failure to comply with the notice and demand procedures required under California  
7 Civil Code § 1750 *et seq.*

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 **(Corrective Action)**

10 The COMPLAINT may be barred, in whole or in part, because damages may  
11 not be awarded to PLAINTIFFS and members of the purported class pursuant to  
12 California Civil Code §§ 1782(b), 1782(c), and 1784.

13 **SEVENTEENTH AFFIRMATIVE DEFENSE**

14 **(Preemption)**

15 The COMPLAINT may be barred, in whole or in part, by the doctrine of  
16 federal preemption.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**

18 **(Primary Jurisdiction)**

19 The COMPLAINT may be barred, in whole or in part, by the doctrine of  
20 primary jurisdiction.

21 **NINETEENTH AFFIRMATIVE DEFENSE**

22 **(Abstention)**

23 The COMPLAINT may be barred, in whole or in part, by the doctrine of  
24 abstention.

25 **TWENTIETH AFFIRMATIVE DEFENSE**

26 **(No Entitlement to Relief Sought)**

27 The COMPLAINT may be barred, in whole or in part, because PLAINTIFFS  
28 seek relief to which they are not entitled.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Speculative Damages)**

The COMPLAINT may be barred, in whole or in part, because the damages sought are too speculative and remote.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

The COMPLAINT may be barred, in whole or part, due to PLAINTIFFS' failure to mitigate damages.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Adequate Remedy at Law)**

Any injury or damage suffered by PLAINTIFFS or any member of the purported class, if there were any, would be adequately compensated in an action at law for damages.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(No Entitlement to Punitive Damages)**

Any award of punitive damages to PLAINTIFFS is barred under the relevant state or federal law and would violate MILLENNIUM'S state or federal constitutional rights.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(No Basis for Restitution)**

There is no basis for restitution as MILLENNIUM has not been unjustly enriched.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**(No Entitlement to Injunctive Relief)**

The COMPLAINT may be barred, in whole or in part, because PLAINTIFFS fail to state a claim for injunctive relief.



**TWENTY-SEVENTH AFFIRMATIVE DEFENSE****(Failure to State a Claim With Particularity)**

PLAINTIFFS have failed to plead the allegations in the COMPLAINT with sufficient particularity, including, but not limited to, the fact that the COMPLAINT fails to state and identify with sufficient particularity the circumstances and communications allegedly constituting misrepresentation and fraud, as required by Rule 9(b) of the Federal Rules of Civil Procedure.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE****(No Extraterritorial Application of California Law)**

The COMPLAINT may be barred, in whole or in part, because the extraterritorial application of PLAINTIFFS' claims, arising under California law, to wholly interstate or foreign commerce, and/or the application of California laws to the claims of non-residents under the circumstances of this case, would violate the laws of California or otherwise be beyond the scope of jurisdiction of those laws, and/or violate the United States Constitution or otherwise be unconstitutional.

**TWENTY-NINTH AFFIRMATIVE DEFENSE****(No New York Claim Based on Non-New York Conduct)**

The COMPLAINT may be barred, in whole or in part, to the extent it seeks to assert claims under the New York General Business Law based on purchases of MILLENNIUM'S products or other alleged acts, conduct, or statements that were undertaken or made outside of New York.

**THIRTIETH AFFIRMATIVE DEFENSE****(Consent)**

The COMPLAINT may be barred, in whole or in part, to the extent PLAINTIFFS consented to, approved of, and/or ratified all acts and omissions about which PLAINTIFFS now complain.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

**(Puffery)**

The COMPLAINT may be barred, in whole or in part, to the extent it asserts claims arising out of non-actionable puffery.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

**(Equitable Defenses)**

The COMPLAINT may be barred, in whole or in part, based on principles of equity, including, but not limited to, the doctrines of unclean hands, waiver, and estoppel.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

**(Reservation of Rights)**

MILLENNIUM is informed and believes and on such basis alleges that it may have additional defenses available which are not fully known and of which MILLENNIUM is not presently aware. MILLENNIUM reserves the right to raise and assert additional defenses after such defenses have been ascertained.

**PRAYER FOR JUDGMENT**

WHEREFORE, MILLENNIUM prays for judgment in its favor as follows:

1. That this suit cannot be maintained as a class action;
2. That the COMPLAINT be dismissed in its entirety on the merits;
3. That PLAINTIFFS take nothing by the COMPLAINT;
4. That MILLENNIUM be awarded its costs, disbursements, and expenses incurred herein;
5. That MILLENNIUM be awarded reasonable attorneys' fees as provided by law; and

1           6. That MILLENNIUM be awarded such other relief as the Court  
2 may deem proper.

3  
4 Dated: February 29, 2016

O'MELVENY & MYERS LLP

7 By: /s/ Scott M. Voelz

8 Scott M. Voelz  
9 Attorneys for Defendant  
10 Millennium Products, Inc.  
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